

ALBERT D. FLECK
CARL J. WILLIAMS
WILLIAM L. MEDALIE

IBLA 85-195, 85-170

Decided March 31, 1986

Appeals from decisions of the Alaska State Office, Bureau of Land Management, dismissing petitions for reinstatement of noncompetitive oil and gas lease. AA-48661.

Affirmed.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production in paying quantities terminates automatically by operation of law where the annual rental is not paid on or before the lease anniversary date. Although an assignment of 100 percent of record title to a portion of the leased lands segregates the assigned portion and the retained portion into separate leases, this is not true of an assignment of operating rights and timely payment of the rental for the entire lease acreage is required to maintain the lease.

2. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Reinstatement

An assignment of operating rights in an oil and gas lease may not be approved after the lease has terminated for nonpayment of the annual rental and a decision dismissing a petition for reinstatement of the lease by the assignee of an unapproved assignment of operating rights will be affirmed.

APPEARANCES: Albert D. Fleck, Carl J. Williams, William L. Medalie, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Albert D. Fleck, Carl J. Williams, and William L. Medalie have appealed from decisions of the Alaska State Office, Bureau of Land Management (BLM), dated November 8, 1984, dismissing their petitions for reinstatement of noncompetitive oil and gas lease AA-48661.

Effective June 1, 1983, BLM issued a noncompetitive oil and gas lease for 3,816 acres of land situated in secs. 7, 18 through 20, 30 and 31, T. 13 N., R. 5 W., Copper River Meridian, Alaska, to Trans Alaska Development Corporation (Trans Alaska), pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Requests for approval of assignments to appellants of operating rights in varying percentages to certain 40- and 80-acre tracts embraced in the lease were subsequently filed with BLM between January 17, and March 12, 1984. By notice dated March 16, 1984, BLM suspended the processing of applications for approval of assignments of noncompetitive and nonproducing oil and gas leases involving less than 2,560 acres in Alaska. See 49 FR 10582 (Mar. 21, 1984). 1/ Processing of such assignments, including those at issue in this appeal, was suspended until August 16, 1984, when the suspension was lifted. See 49 FR 33501-33502 (Aug. 23, 1984).

By notice dated August 13, 1984, BLM informed Trans Alaska and others with pending unapproved assignments, including appellants, that noncompetitive oil and gas lease AA-48661 had terminated on June 1, 1984, the lease anniversary date, for failure to pay the annual rental on or before that date. BLM also notified the named parties that they had a right to petition for reinstatement pursuant either to 30 U.S.C. § 188(c) (1982) (Class I reinstatement) or 30 U.S.C. § 188(d) and (e) (1982) (Class II reinstatement), and explained the procedure for seeking reinstatement.

On August 24 and 28, 1984, appellants filed petitions for reinstatement of oil and gas lease AA-48661. In summary, appellants argued that they either had been assured that the annual rental due on June 1, 1984, had in fact been paid or had never been notified by Trans Alaska that the annual rental was due. In each case, appellants submitted a nonrefundable filing fee of \$ 25 with their petitions, pursuant to the August 1984 BLM notice and 43 CFR 3108.2-2(a)(3). It appears from the record that appellant Williams also tendered a rental payment in the amount of \$ 50 on November 27, 1984, and that appellant Medalie tendered a rental payment in the amount of \$ 80 received by BLM on August 24, 1984. 2/

In its November 1984 decisions, BLM dismissed appellants' petitions for reinstatement because only the lessee of record and not a potential lessee pursuant to an unapproved assignment may petition for reinstatement of a terminated lease, citing 43 CFR 3106.1 and Grace Petroleum Corp., 62 IBLA 180 (1982).

1/ Although the Federal Register announcement excluded assignments of operating rights, this exclusion was apparently not recognized by the Alaska State Office, BLM, at least where there was no imminent development activity on the lease.

2/ The record discloses assignments of operating rights in two separate 80-acre tracts of land included in oil and gas lease AA-48661 from Trans Alaska to Medalie.

In his statement of reasons for appeal, Fleck asserts he was notified on June 25, 1984, that the annual rental was due and he responded that it had been paid. ^{3/} Williams asserts on appeal that he has never been properly notified of what is required in payment of the annual rental, and that he stands ready to make the required payment. ^{4/}

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease, on which there is no well capable of producing oil or gas in paying quantities, will automatically terminate by operation of law where the lessee fails to pay the annual rental on or before the lease anniversary date. See also 43 CFR 3108.2-1(a). Each of the assignments executed by appellants (assignees) and Trans Alaska (assignor) was an assignment of operating rights under the lease as distinguished from an assignment of record title. Although an assignment of record title to 100 percent of a portion of the leased lands segregates the assigned portion and the retained portion into separate leases, this is not true of an assignment of operating rights. 43 CFR 3106.7-5; see 30 U.S.C. § 187a (1982). Hence, the annual rental due for the lease at issue here, embracing 3,816 acres, was \$ 3,816. Accordingly, oil and gas lease AA-48661 terminated automatically by operation of law on June 1, 1984, the lease anniversary date, upon the failure to pay the annual rental on or before that date.

[2] This Board has held that a partial assignment of record title to certain acreage in a Federal oil and gas lease filed by a qualified assignee prior to the lease anniversary date may be approved after the anniversary date where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date. Ladd Petroleum Corp., 70 IBLA 313 (1983). However, this will not avail appellants herein because the assignment was of operating rights which does not segregate the assigned acreage and because no rental payments were tendered prior to the anniversary date.

With respect to appellants' petitions for reinstatement, BLM properly noted that only the lessee of a terminated lease has standing to petition for

^{3/} The payment to which appellant refers is shown by the receipt attached to Fleck's statement of reasons to be the nonrefundable filing fee of \$ 25, apparently paid upon the filing of the assignment with BLM, pursuant to 43 CFR 3106.3. Appellant also asserts that he paid the "annual fee" in the amount of \$ 25 when he filed his petition for reinstatement. Appellant is again mistaken as the record discloses that fee was the filing fee required by 43 CFR 3108.2-2(a)(3) and not the annual rental.

^{4/} No statement of reasons in support of his appeal was filed by Medalie. Accordingly, pursuant to 43 CFR 4.402(a) that appeal is dismissed. We note, however, that even had the appeal been perfected the decision of the Alaska State Office would be affirmed for the reasons stated in the text, infra.

reinstatement of the lease upon tender of the required rental due. Howard H. Vinson, 90 IBLA 280 (1986); J. Edward Hollington, 86 IBLA 345 (1985); Grace Petroleum Corp., *supra*. Therefore, we conclude BLM properly dismissed appellants' petitions for reinstatement of oil and gas lease AA-48661.

We note that oil and gas lease AA-48661 would not be subject to reinstatement even if appellants' petitions for reinstatement were deemed to be properly filed. Appellants' petitions ostensibly sought reinstatement pursuant to 30 U.S.C. § 188(c) (1982). However, the lease cannot be so reinstated where the annual rental due was not paid within 20 days after the lease anniversary date, *i.e.*, June 1, 1984. William E. Phalen, 84 IBLA 151 (1984). Further, as noted previously, the annual rental payment required for this lease was \$ 3,816, which was never tendered.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge

